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Back to Basics: Who Pays For Disability Accommodations and Modifications Under Fair Housing Laws?

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As a follow up to my recent newsletter article on what qualifies as a disability, I want to address the question regarding who is obligated to pay when a disabled resident requests some change related to the disability.

There are two general types of changes that may be required for disabled residents. The changes may be either physical alterations to premises or policy and procedure changes involving the governance of the association. In Fair Housing jargon, physical changes are referred to as "modifications" and the policy and procedure changes are referred to as "accommodations." It is important to distinguish between the two types of changes because this distinction has a substantial effect on who must pay for the cost of the required changes.

The law is clear that the cost of modifications to residential premises occupied by a disabled resident must be paid by the disabled resident. 42 U.S.C. § 3604(f)(3)(A). However, requests for modifications to common areas are a little more complex from a legal perspective. A policy statement issued by HUD and the Department of Justice indicates that the same rule applies to modifications of common areas – the disabled resident pays for the changes. On the other hand, the federal Fair Housing Act itself only addresses changes to the premises occupied by the disabled resident. The "occupied premises" would not logically include common areas. This inconsistency between the plain language of the law and the government's explanation of it causes confusion and often leads to the filing of Fair Housing complaints. For this reason, associations should proceed with a higher degree of caution when confronted with requests for modifications to common areas.

Many accommodations as to policies or rules require no expense by any party. The question of who is responsible to pay does not arise as frequently in this context. For instance, if a disabled resident needs a dog to alleviate the effects of a disability, and there is a prohibition on pets in the community, there is no direct cost to anyone to make an accommodation to the "no pets" rule. According to the government's established policy, an association bears the cost of accommodations unless it would impose an undue financial burden on the association. The government's policy states that the factors to be considered in determining whether the cost would constitute an undue financial burden include: the cost of the accommodation, the financial resources of the association,

the potential benefits of the accommodation to the disabled resident, and the availability of lower cost alternative accommodations.

Please keep in mind that the issue of who pays for a modification or accommodation is several steps into the Fair Housing analysis. You must have already investigated the existence of a disability and determined that the requested change is related to the disability and is needed to alleviate the effects of the disability. As general rules, though, the association must pay for accommodations in policies and rules and the residents must pay for physical modifications.

If you have any questions about this or other Fair Housing issues, please contact Jason Smith in our office for more information.

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